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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 TOTAL WEALTH
15 MANAGEMENT, INC., *et al.*,

16 Defendants.

Case No. 15-cv-00226-BAS-RNB

ORDER:

**(1) GRANTING FOURTH
INTERIM APPLICATIONS FOR
PAYMENT OF FEES AND
REIMBURSEMENT OF
RECEIVER THOMAS A.
SEAMAN AND ALLEN
MATKINS,**

**(2) GRANTING FIRST
APPLICATION OF CROWE
LLP, ACCOUNTANT FOR THE
RECEIVER,**

AND

**(3) INSTRUCTING RECEIVER
TO PROPOSE AN OMNIBUS
PLAN FOR DISTRIBUTION OF
PROCEEDS AND WINDING-UP
OF THE RECEIVERSHIP**

[ECF No. 241]

27 Before the Court are the Fourth Interim Applications for Payment of Fees and
28 Reimbursement of Expenses of the Receiver and his counsel of record, Allen Matkins

1 Leck Gamble Mallory & Natsis LLP (“Allen Matkins”). These applications cover
2 the period from January 1, 2017 through July 31, 2018 (the “Application Period”).
3 The Receiver reports \$148,290.00 in fees incurred during the Application Period and
4 requests an interim payment of 90% of his fees, for an award amount of \$133,461.00.
5 Allen Matkins reports \$421,162.25 in fees incurred during the Application Period,
6 and requests an interim payment of 70% of its fees, for an award amount of
7 \$294,814.57. Allen Matkins also requests full expenses reimbursement in the amount
8 of \$5,107.86. In addition to these Applications, the accountant for the Receiver,
9 Crowe LLP (“Crowe”), has filed its First Application for Compensation and
10 Reimbursement of Expenses. (ECF No. 241–3.) The Crowe application period
11 covers March 1, 2015 through November 30, 2017. (*Id.*) Crowe reports \$157,727.00
12 in fees, for which it seeks payment of the outstanding \$125,330.81 balance, and no
13 expenses. The Securities and Exchange Commission (“SEC”) has a filed a notice of
14 non-opposition to the Receiver’s and Allen Matkins’ Fourth Applications and
15 Crowe’s First Application. (ECF No. 243.) For the reasons herein, the Court grants
16 each Application.

17 **LEGAL STANDARD**

18 “A receiver appointed by a court who reasonably and diligently discharges his
19 duties is entitled to be fairly compensated for services rendered and expenses
20 incurred.” *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008). This entitlement
21 to reasonable compensation extends to the professionals employed by the receiver.
22 *See Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). The court
23 appointing the receiver has “full power” to fix the compensation of the receiver and
24 the receiver’s counsel. *Id.* “As a general rule, the expenses and fees of a receivership
25 are a charge upon the property administered.” *Gaskill v. Gordon*, 27 F.3d 248, 251
26 (7th Cir. 1994).

27 In evaluating the reasonableness of the fees and costs requested, the court
28 considers, among other things, the quality of the work performed, the benefits

1 obtained on behalf of the receivership estate, the complexity of the problems faced,
2 and the burden of the fee request on the receivership estate. *See SEC v. Fifth Ave.*
3 *Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). The receiver bears the
4 burden of demonstrating to the court any entitlement to the payment of fees and costs
5 in the amount requested. *See* 65 Am. Jur. 2d, Receivers § 228 (2d ed. Feb. 2016
6 update). The SEC’s support for, or opposition to, a fee application “will be given
7 great weight.” *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

8 **DISCUSSION**

9 **A. The Receiver’s Fourth Request for Fees**

10 The Receiver requests \$133,461.00 in fees for work performed during the
11 Application Period. According to the billing records submitted with the application,
12 the Receiver and his staff expended 1,226.1 hours on behalf of the Receivership,
13 performing such tasks as working to recover additional assets of the Receivership
14 Entities, reviewing and addressing investor and creditor claims on the Receivership
15 Entities, recovering settlement proceeds in connection with two California state court
16 actions, and the compilation of reports to the Court regarding administration of the
17 Receivership. (ECF No. 241-1 at 2–4.) The average hourly rate for work performed
18 during the Application Period by the Receiver’s agents ranged from \$60 to \$270, at
19 an average hourly rate of \$109 per hour. *Id.* at 6. The Successor Receiver, whose
20 normal billing rate is \$400 per hour, agreed to a reduced hourly rate of \$270. The
21 Receiver represents that he saved the receivership estate approximately \$15,886.00
22 through his discounted billing rates during the Application Period. (ECF No. 241-1
23 at 6.) The Receiver represents that by using qualified staff billing at “significantly
24 lower rates,” he achieved a “blended” weighted average hourly rate of \$121 per hour.
25 (*Id.*)

26 The Court finds the Receiver’s request for \$133,461.00 in fees to be fair and
27 reasonable. As with prior applications, the Receiver has provided thorough, well
28 documented billing records, allowing the Court to evaluate the tasks performed, hours

1 expended, hourly rates, and total fees incurred for each task category. (ECF No. 241-
2 1 Exs. A, B.) The Receiver's hourly rate of \$270 is reasonable. The Receiver
3 recovered \$1,009,623 in assets during the Application Period, making the Receiver's
4 requested fees a reasonable 14.7% of the gross receipts recovered during the period.
5 Finally, the SEC has reviewed the Receiver's fee application and supports the request
6 for an interim payment, a position that this Court gives significant weight. Thus,
7 considering the time records presented, the quality of the work performed, the
8 benefits obtained on behalf of the receivership estate, and the SEC's perspective on
9 the matter, among other factors, the Court finds the Receiver's fee request to be fair
10 and reasonable. Accordingly, the Court approves the Receiver's fees of \$148,290.00
11 during the Application Period and authorizes the Receiver to pay on an interim basis
12 \$133,461.00 from the assets of the Receivership Entities, which reflects 90% of the
13 approved fees.

14 **B. Allen Matkins' Fourth Request for Fees and Reimbursement of Costs**

15 According to billing records submitted by Allen Matkins, the firm spent a total
16 of 786.4 hours working on behalf of the Receiver, for fees incurred totaling
17 \$421,162.25. (ECF Nos. 241-2 at 4, Ex. A.) The hourly rates ranged from \$265.50
18 to \$795. The firm also incurred \$5,017.86 in expenditures. (ECF No. 241-2 at 4.)
19 Allen Matkins performed a wide range of tasks to assist the Receiver during the
20 Application Period, including negotiation and obtaining of court approval for
21 settlements of certain related state court actions, recovery of funds for the
22 Receivership, preparation and submission of the Receiver's interim reports to the
23 Court, assistance of the review and process of timely claims by Receivership Entity
24 investors and other creditors. (*Id.* at 3–4.)

25 The Court concludes that Allen Matkins' request for fees and costs is fair and
26 reasonable. Allen Matkins is a well-known California firm with extensive experience
27 in federal receiverships. (ECF No. 241-2 Ex. B.) The firm's billing rates are
28 comparable to the usual fees for similarly complex services in the community. The

1 firm has provided detailed billing records clearly outlining the tasks performed, the
2 hourly rate, the time expended on each task, and the personnel assigned to each task.
3 (ECF No. 241-2 Ex. A.) The records indicate that the firm staffed the various tasks
4 appropriately and efficiently based on the expertise required. Allen Matkins also
5 states that it discounted its ordinary billing rates by 10% for attorneys staffed on the
6 matter. (ECF No. 241-2 at 5.) Finally, as in the case of the Receiver's fee application,
7 the Court gives significant weight to the SEC's support for Allen Matkins' request
8 for fees and reimbursement of expenses, given the Commission's expertise and
9 familiarity with comparable proceedings. Accordingly, the Court approves Allen
10 Matkins' fees in the amount of \$421,162.25. The Receiver is authorized to pay on
11 an interim basis \$294,814.57 from the assets of the Receivership Entities, which
12 reflects 70% of the approved fees during the Application Period. In addition, the
13 Court approves Allen Matkins' costs totaling \$5,107.86, and authorizes and directs
14 the Receiver to reimburse Allen Matkins for such costs in full.

15 **C. Crowe's First Request for Fees**

16 As a final matter, Crowe makes its first request for fees incurred in connection
17 with the Receivership, which account for the March 1, 2015 through November 30,
18 2017 time period. Crowe seeks approval of \$157,727.00 in fees and reports that
19 \$32,396.10 has been paid to date. Crowe thus requests an order authorizing the
20 Receiver to pay the unpaid balance of \$125,330.81.

21 According to billing records submitted by Crowe, the firm spent a total of
22 719.20 hours working on behalf of the Receiver, for fees incurred totaling
23 \$421,162.25, during the 32-month period covered in its application. (ECF Nos. 241-
24 3 at 2, Exs. A–C, E.) The hourly rates ranged from \$60 to \$665. (ECF No. 241-3
25 Ex. B.) The firm has not reported any expenses during the period. (ECF No. 241-2
26 at 2.) Crowe performed a range of accounting tasks to assist the Receiver during its
27 application period, including reconstruction of the pre-receivership financial records
28 and tax books, analysis of federal and state income tax issues, and preparation of 44

1 federal and state income tax returns for various Receivership Entities. (ECF No. 241-
2 3 at 3–4.)

3 The Court concludes that Crowe’s request for fees and costs is fair and
4 reasonable. Crowe is an experienced accounting firm. (ECF No. 241-3 Ex. D.) The
5 firm has provided detailed billing records clearly outlining the tasks performed, the
6 hourly rate, the time expended on each task, and the personnel assigned to each task.
7 (ECF No. 241-2 Ex. A.) Crowe indicates that it submitted “some of its bills” to the
8 Receiver for advance approval, which included certain reductions in fees, which the
9 Receiver in turn reviewed and also requested certain reductions. (ECF No. 241-2 at
10 9.) Crowe further states that it attempted “as best as possible” to avoid utilizing
11 professional at a right rate than needed.” (*Id.*)¹ Finally, as in the case of the
12 Receiver’s and Allen Matkins’ fee applications, the Court gives significant weight to
13 the SEC’s support for Crowe’s request for fees, given the Commission’s expertise
14 and familiarity with comparable proceedings. Unlike with the Receiver and Allen
15 Matkins, the SEC has not requested a percentage reduction of the fees to be awarded
16 on an interim basis.² Accordingly, the Court approves Crowe’s fees in the amount of
17 \$157,727.00, for the period dated March 1, 2015 through November 30, 2017. The
18 Receiver is authorized to pay the remaining \$125,330.81 balance, on an interim basis,
19 from the assets of the Receivership Entities.

22 ¹ Like both the Receiver and Allen Matkins have done, any future fee applications from
23 Crowe shall expressly identify the magnitude of any billing discounts and reductions, whether by
24 percentage or in a dollar figure. Crowe shall also report to the Court the average hourly rate and
25 weighted average hourly weight for the work completed during the application period. Future
26 applications should provide information showing the magnitude of requested fees relative to the
gross receipts for the Receivership Assets. In other words, Crowe should strive to conform any
future fee applications to the Court with the information provided by the Receiver and Allen
Matkins.

27 ² The Receiver and/or the SEC should consider whether it is appropriate to do so in
28 connection with any future request for fees by Crowe. Any future request for fees should both
indicate whether such consideration has occurred and the decision reached.

1 **CONCLUSION & ORDER**

2 For the foregoing reasons, the Court **GRANTS** (1) the Receiver's and Allen
3 Matkins' respective fourth interim applications for fees and costs for the period
4 January 1, 2017 through July 31, 2018, and (2) Crowe's first interim application for
5 fees for the period March 1, 2015 through November 30, 2017, as follows:

6 1. The Court **APPROVES** the Receiver's fees in the amount of
7 \$148,290.00;

8 2. The Court **AUTHORIZES** and **DIRECTS** the Receiver to pay 90% of
9 the approved fees from the assets of the Receivership Entities, on an interim basis, in
10 the amount of \$133,461.00;

11 3. The Court **APPROVES** Allen Matkins' fees in the amount of
12 \$421,162.25;

13 4. The Court **AUTHORIZES** and **DIRECTS** the Receiver to pay Allen
14 Matkins 70% of the approved fees from the assets of the Receivership Entities, on an
15 interim basis, in the amount of \$294,814.57;

16 5. The Court **APPROVES** Allen Matkins' request for reimbursement of
17 costs in the amount of \$5,107.86, and **AUTHORIZES** and **DIRECTS** the Receiver
18 to reimburse Allen Matkins for such costs in full.

19 6. The Court **APPROVES** Crowe's fees in the amount of \$157,727.00;
20 and


21 7. The Court **AUTHORIZES** and **DIRECTS** the Receiver to pay Crowe
22 the remaining balance of \$125,330.81.

23 8. In addition, **the Receiver is AUTHORIZED and INSTRUCTED** to
24 develop and propose an omnibus plan which addresses: (1) the Receiver's plan for
25 distribution of proceeds on allowed claims per the Court's prior order (ECF No. 240)
26 and as the Receiver recommended in his Seventh Interim Report to the Court (ECF
27 No. 232 at 8), and (2) the Receiver's plan for winding-up and closing the instant
28 Receivership. The plan shall address payment of any outstanding fees and expenses

1 incurred for period after the Fee Applications covered by the instant order. **The**
2 **Receiver shall submit his proposed omnibus plan and all necessary**
3 **documentation to the Court no later than February 11, 2019.**

4 **IT IS SO ORDERED.**

5 **DATED: December 4, 2018**


Hon. Cynthia Bashant
United States District Judge